NOV 29

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 451

JOSEPH RICE,

Petitioner,

vs.

H. H. ARNOLD, AS SUPERINTENDENT OF MIAMI SPRINGS COUNTRY CLUB

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

ROBERT L. CARTER,
G. E. GRAVES, JR.,
JOHN D. JOHNSON,
THURGOOD MARSHALL,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statement	2
Specification of Errors To Be Urged	6
Reasons For Granting The Writ	7
Conclusion	10

Table of Cases Cited

McLaurin v. *Board of Regents*, 339 U.S. 637	2
Oyama v. *California*, 332 U.S. 633	10
Rescue Army v. *Municipal Court*, 331 U.S. 549	9
Shelley v. *Kraemer*, 334 U.S. 1	10
Sweatt v. *Painter*, 339 U.S. 629	2
Takahashi v. *Fish & Game Commission*, 334 U.S. 410	10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 451

JOSEPH RICE,

Petitioner,

vs.

H. H. ARNOLD, AS SUPERINTENDENT OF MIAMI SPRINGS COUNTRY CLUB

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Florida, entered in the above-entitled case on August 31, 1951.

Opinions Below

The opinion of the court below, now being brought before this Court, is reported in 54 So. 2d 114 and appears at page 23 of the record herein.

Jurisdiction

Judgment was entered on August 31, 1951, by the Supreme Court of Florida (R. 32). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254.

Petitioner is here filing a petition for writ of certiorari for a second time. On March 24, 1950, the State of Florida entered judgment against petitioner, 45 So. 2d 195 (R. 14-19), and a petition for writ of certiorari was filed in this Court. On August 16, 1950, the petition for writ of certiorari was granted, 340 U. S. 848 (R. 21), the judgment was vacated and set aside, and the cause remanded for reconsideration in the light of subsequent decisions of this Court in *Sweatt* v. *Painter,* 339 U. S. 629; and *McLaurin* v. *Board of Regents,* 339 U. S. 637.

Question Presented

May a state, in operating a public golf facility, condition, restrict or limit the use and enjoyment of such facility on the basis of the applicant's race or color without violating the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Statement

The City of Miami, Florida, owns and operates a golf course known as the Miami Springs Country Club. It is the only publicly-owned and operated golfing facility in the city. Respondent is the duly appointed and acting Superintendent of said public golf course and has the power and duty to make and enforce rules and regulations governing the use and enjoyment of these facilities by the general public (R. 1).

Prior to April 27, 1949, respondent had promulgated and was enforcing a rule and regulation under which Negro

citizens were permitted to use the Miami Springs Country Club golf course only on Monday of each week, the remaining six days being reserved for the exclusive use of white persons (R. 5).

On April 27, 1949, that day being a Wednesday and a day which under respondent's rule and regulation persons of the Negro origin were not entitled to use of the golf course, petitioner, a Negro, sought respondent's permission to play on the golf course. Such permission was denied pursuant to the rule and regulation heretofore referred to (R. 3).

On June 3, 1949, petitioner filed in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, a petition for an alternative writ of mandamus to require respondent to permit him to use the said golf course at all times during which said golf course was open to the general public and subject only to such rules and regulations as were applicable to all persons (R. 1).

The alternative writ, as prayed for, was issued by the Circuit Court of Dade County on June 10, 1949 (R. 3). In accordance with the terms of the alternative writ, respondent thereupon filed his return and answer (R. 4). In his answer, respondent sought to defend the rule and regulation under which petitioner was denied use of the golfing facilities on the following grounds: (1) That the public policy of the state and of the City of Miami required the segregation of the races in the use of public facilities; (2) that for a period of six days in April, Negroes were permitted to use the golf course without restriction; (3) that the golf course is self-sustaining, depending upon the fees paid by the golfers; that an average of 200 players per day is necessary to sustain it on a paying basis; (4) that following the admission of Negro players, white players announced their intention of withdrawing their patronage if forced to share such facilities with Negroes; (5) and in view of the small number of Negro golfers who took ad-

vantage of these facilities it would become necessary for the City of Miami to abandon the golf course unless an alternative regulation for its use was adopted; (6) that the present policy was adopted limiting Negro players to the use of said facilities on one day of each week, reserving the remaining six days for the exclusive use of white persons; (7) and that since the promulgation of this latter rule, the number of Negro golfers has not increased sufficiently to warrant increasing the time allotted for them in the use of these facilities (R. 4-6).

Petitioner, thereupon, moved for a peremptory writ of mandamus on July 18, 1949, upon the grounds that respondent's allegations set forth in the return and answer, if proved, would not constitute a legal defense (R. 6-7). The motion for peremptory writ of mandamus was denied by the Circuit Court, the alternative writ dismissed and final judgment granted the respondent on June 22, 1949 (R. 7-9).

An appeal was thereupon taken to the Supreme Court of the State of Florida. On appeal, petitioner contended that the rule and regulation promulgated by respondent whereby petitioner, because he is a Negro, was permitted to use the golf course only on Mondays, deprived petitioner of the equal protection of the laws as guaranteed under the Fourteenth Amendment to the Constitution of the United States. The Supreme Court of Florida, on March 24, 1950, affirmed the judgment of the lower court (R. 14-19). In so holding, the Court said:

> ". . . It does not appear by the record that the one day allotment of the facilities of the course to the negroes discriminated against the negro race. The days of playing each week were apportioned to the number of white and colored golfers according to the record of the course kept by the respondent. If an increased demand on the part of the negro golfers is made to appear, then more than one day each week will be allotted . . ." (R. 18-19).

Petitioner then brought the case to this Court. Between the time of the decision of the Florida Supreme Court and filing of the petition for writ of certiorari in this Court, *Sweatt* v. *Painter, supra,* and *McLaurin* v. *Board of Regents, supra,* were decided. On October 16, 1950, this Court, in a *per curiam* opinion, granted the petition for writ of certiorari, vacated and set aside the judgment of the Florida Supreme Court and remanded the cause for reconsideration in the light of the *Sweatt* and *McLaurin* cases (R. 21). On the return of this Court's mandate to the Supreme Court of Florida, ordering the reconsideration of the cause, the Supreme Court of Florida refused to permit the filing of briefs by counsel for either party and refused to permit oral argument as to the effect of the *McLaurin* and *Sweatt* decisions on the instant controversy. Without ordering any new hearing or permitting the filing of any new briefs, the court, on August 31, 1951, handed down its opinion and judgment, with two justices dissenting (R. 23), in which it held that the *McLaurin* and *Sweatt* cases were not applicable to the instant controversy. The court said:

> "It is significant that in the Sweatt case the court was urged to hold that discrimination inevitably results wherever the 'separate but equal' doctrine is applied with reference to public facilities furnished persons of different races; but the court said, 'broader issues have been urged for our consideration, but we adhere to the principle of deciding constitutional questions only in the context of the particular case before the court', thereby declining to destroy the well established rule that has been applied ever since the adoption of the Fourteenth Amendment to the Constitution to the effect that where separate but equal facilities are provided persons of different races, no person of either race is thereby denied the full protection of his constitutional rights. Among the numerous decisions enunciating this principle, we cite only Plessy v. Fergu-

son . . . because of its clarity and because the Supreme Court in the Sweatt case expressly declined to 're-examine' that holding, thus impliedly directing all courts subordinate to it in the field of constitutional construction, to continue to recognize that decision as binding authority. We are directed to reconsider our conclusions in the case before us in the light of the decision in the Sweatt case. A part of that decision was the refusal of the Supreme Court to modify Plessy v. Ferguson.

"In the case before us, there is no question of the equality of the physical facilities offered petitioner with which he may enjoy his constitutional right to engage in the game of golf upon public property. The facilities offered petitioner are identical with the facilities offered persons of other races by the City of Miami." (R. 28-29)

The Court then affirmed the judgment of the Circuit Court of and for Dade County in denying petitioner's motion for peremptory writ of mandamus.

Whereupon, petitioner, for a second time, brings the cause here for review by this Court.

Specification of Errors to Be Urged

The Supreme Court of Florida erred:

1. In refusing to hold that respondent's rule and regulation, under which petitioner and all other Negroes, solely because of color, were prohibited from using the Miami public golf course except on Monday of each week and white persons were permitted to use said facilities on all other days, was an unconstitutional infringement of petitioner's rights as secured under the Fourteenth Amendment to the Constitution of the United States.

2. In refusing to hold that petitioner was entitled to unrestricted use of the Miami Springs Golf Club subject only

to the same rules and regulations which were applicable to all other persons.

3. In refusing to hold that respondent's rule and regulation, under which one day per week was set aside for the exclusive use of the Miami public golf course by Negroes and Negroes were not permitted to use the golfing facilities on any other day, was a denial of the equal protection of the laws as defined by this Court in *Sweatt* v. *Painter, supra,* and *McLaurin* v. *Board of Regents, supra.*

Reasons for Granting the Writ

1. The mandate of this Court, vacating and setting aside the initial judgment of the court below and remanding the cause for reconsideration in the light of *Sweatt* v. *Painter, supra,* and *McLaurin* v. *Board of Regents, supra,* in effect has been ignored. The court below held that the *McLaurin* and *Sweatt* cases were not applicable and decided the instant controversy as if those two cases did not exist.

In its original opinion and judgment, before the Court for review last term, the Supreme Court of Florida sustained respondent's rule and regulation, under which petitioner solely because of his color, was denied use of the Miami golf course except on Mondays, as being consistent with the requirements of the Fourteenth Amendment in that the allocation of one day per week to Negroes to use the golf course was deemed to afford petitioner substantially equal accommodations. On remand, the court below found that the *McLaurin* and *Sweatt* cases had left unchanged and undisturbed its original impression of the applicable law and that the special rule and regulation restricting petitioner's use of the Miami public golf course, solely because he is a Negro, did not constitute a denial of substantially equal accommodations required by the Fourteenth Amendment.

Thus, petitioner stands in exactly the same position as when he filed his original petition for writ of certiorari last term. It is submitted that had this been the intention or expectation of this Court, the original petition for writ of certiorari would have been denied or, if granted, the judgment of August 24, 1950, would have been affirmed.

2. This case is a phase of the same problem raised in the *McLaurin* and *Sweatt* cases, and the principles governing disposition of those cases control determination of the instant controversy. Those cases dealt with public educational facilities and this case deals with public recreational facilities. The constitutional question raised, however, is identical. Petitioner is here complaining of being set apart by the state because of his color, of being subjected to special rules and regulations different from those applicable to all other persons with respect to his use of a public golf facility. He asserts that the state is without power to treat him differently than it treats other persons solely because of the accident of his color and that by allowing him to use the public golf course subject to special conditions, the state is depriving him of equal public accommodations in violation of rights secured under the Fourteenth Amendment. *McLaurin* and *Sweatt* made the same complaint and the same assertion except that they were concerned with public graduate and professional instruction.

In the *McLaurin* and *Sweatt* cases, the question decided by this Court was the extent to which the equal protection clause of the Fourteenth Amendment limited "the power of a state to distinguish between students of different races in professional and graduate education in a state university." While the specific constitutional determination made in those cases concerned state power to make racial distinctions among students in state graduate and professional schools, the basic and underlying problem before the Court was the extent to which the Fourteenth Amendment

limits state power to make distinctions among persons based upon race or color in the use and enjoyment of public facilities. To have spoken in terms of this basic issue in either *McLaurin* or *Sweatt* would have involved a determination of a constitutional question broader than necessary to dispose of the specific problem which those cases brought before the Court, contrary to normal Supreme Court practice. *Sweatt* v. *Painter, supra* at 631; *Rescue Army* v. *Municipal Court*, 331 U. S. 549. Yet the constitutional principles enunciated to determine the narrow problem at hand are subsequent guides to decisions when other facets of the same broad question come before the Court, such as is now presented in the instant case. Recognition of this fact, it is submitted, caused this Court to set aside and remand the original judgment in this case because the decision of the court below was reached prior to, without benefit of the reasoning in, and by application of principles at war with those enunciated in the *McLaurin* and *Sweatt* decisions.

3. The reasons which the court below advances as a basis for distinguishing this case from the *Sweatt* and *McLaurin* cases are, we submit, the very reasons which conclusively demonstrate the unconstitutionality of respondent's rule and regulation. Said the court:

> "Turning to the facts of the case before this court, we take judicial notice that the game of golf is of such a nature that it requires the maintenance of links which cover a considerable area and that it can be played only by persons alone or in very small groups not exceeding, execept in unusual cases, four persons, although several of such groups may play simultaneously on different parts of the course. There are of necessity some, but limited, contacts between the various groups so playing, particularly around the club house and starting tees. The purpose and function of the game is to obtain the pleasure and exercise incident to the

playing and the rivalry and association between persons who arrange in advance to play together. The exercise, the rivalry and the association are not enhanced by the other persons who may, on the same day or during the same hours, elect to enjoy the facilities."

Since contacts are limited and the purpose of playing golf is to obtain pleasure in exercise and in the rivalry and association between persons who arrange to play in advance, there is no valid or important state interest which requires petitioner's discriminatory treatment. The court's opinion demonstrates that petitioner's unrestricted use of the golf course is no threat to public peace, and that white persons using the course who do not care to associate with Negroes would not be forced into such contact against their will. Thus, the reasons normally advanced in justification of racial segregation are entirely absent in this case.

4. The rule and regulation here under attack are based on race alone, and race has long been held to be an improper basis for state action. *Shelley* v. *Kraemer* 334 U. S. 1; *Takahashi* v. *Fish and Game Commission*, 334 U. S. 410; *Oyama* v. *California*, 332 U. S. 633.

Conclusion

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

ROBERT L. CARTER,
G. E. GRAVES, JR.,
JOHN D. JOHNSON,
THURGOOD MARSHALL,
Counsel for Petitioner.

Dated: November 29, 1951.

FILED
JAN 5 1952
CHARLES ELMORE CROPLEY

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 451

JOSEPH RICE,

Petitioner,

vs.

H. H. ARNOLD, AS SUPERINTENDENT OF MIAMI SPRINGS COUNTRY CLUB,

Respondent.

RESPONDENT'S MEMORANDUM IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI

J. W. WATSON, JR.,
JOHN D. MARSH,
Attorneys for Respondent

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 451

JOSEPH RICE,

Petitioner,

vs.

H. H. ARNOLD, AS SUPERINTENDENT OF MIAMI SPRINGS COUNTRY CLUB,

Respondent.

RESPONDENT'S MEMORANDUM IN OPPOSITION TO ISSUANCE OF WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner herein, JOSEPH RICE, originally petitioned for the issuance of a writ of certiorari in Cause No. 145. The petition was granted and the cause was remanded to the Supreme Court of Florida for reconsideration (Tr. 21). This Respondent filed a brief in opposition to the issuance of the writ of certiorari in the mentioned cause No. 145.

The Respondent now elects to stand upon the argument presented in his former brief filed in opposition to the issuance of writ of certiorari in Cause No. 145, together with the statements made in the decision of the Supreme Court of Florida upon reconsideration of the cause in RICE versus ARNOLD, 45 So. 2d 114 (Tr. 23).

In opposing the issuance of writ of certiorari in the instant cause, counsel for the Respondent respectfully request that such brief heretofore filed together with the opinion of the Supreme Court of Florida above mentioned may be considered by the Court in determining whether or not certiorari should issue in this cause.

Finally, on behalf of the Respondent we submit that the mentioned decision of the Supreme Court of Florida is not contrary to the decisions heretofore announced by this court and that no new or novel question meriting consideration by this Court is raised by the petition, and therefore respectfully suggest that the petition for writ of certiorari should be denied.

Respectfully submitted,

J. W. WATSON, JR., City Attorney
4th Floor, 28 West Flagler Street
Miami, Florida
and
JOHN D. MARSH,
Special Assistant City Attorney
801 Biscayne Building
Miami, Florida
Attorneys for Respondent

By_____
Of Counsel

I HEREBY CERTIFY that a copy of the above and foregoing memorandum together with a copy of the respondent's brief in Cause No. 145, JOSEPH RICE, Petitioner, versus H. H. ARNOLD, as Superintendent of Miami Springs Country Club, Respondent, was mailed to each of the following attorneys for the Petitioner:

Robert L. Carter, Esq., 20 West 40th Street, New York 18, New York;

G. E. Graves, Jr., Esq., 941 N. W. Second Avenue, Miami, Florida;

John D. Johnson, Esq., 171 N. W. Eleventh Street, Miami, Florida;

Thurgood Marshall, Esq., 69 Fifth Avenue, New York City, New York;

this_____day of January, 1952.

_____

Of Counsel for Respondent